

1:12 pm, Sep 14, 2018

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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THOMAS GESUALDI, LOUIS BISIGNANO,  
MICHAEL O'TOOLE, MICHAEL C.  
BOURGAL, DARIN JEFFERS, JOSEPH A.  
FERRARA, SR., FRANK H. FINKEL, MARC  
HERBST, DENISE RICHARDSON, AND  
THOMAS F. CORBETT, as Trustees and  
Fiduciaries of the Local 282 Welfare Trust Fund,  
the Local 282 Pension Trust Fund, the Local 282  
Annuity Trust Fund, the Local 282 Job Training  
Trust Fund, and the Local 282 Vacation and Sick  
Leave Trust Fund,

Plaintiff,

-against-

BITUMINOUS ROADRUNNER, INC. and  
JOHN DOE COMPANIES 1-99,

Defendants.  
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MEMORANDUM OF  
DECISION & ORDER

2:17-cv-06153 (ADS)(GRB)

**APPEARANCES:**

**Cohen, Weiss and Simon LLP**

*Counsel for the Plaintiff*

900 Third Avenue 21th Flr.

New York, NY 10022-4869

By: Michael Seth Adler, Esq., Of Counsel.

**SPATT, District Judge:**

On October 23, 2017, the Plaintiffs brought this action to collect withdrawal liability principal, as well as statutory interest, liquidated damages, and attorney's fees and costs, from (a) Bituminous Roadrunner, Inc. ("Bituminous") and (b) John Doe Companies 1-99.

On November 17, 2017, the Clerk of the Court noted the default of Bituminous.

On December 14, 2017, the Plaintiffs moved for default judgment against Bituminous, and further moved for dismissal of the Complaint against John Doe Companies 1-99 without prejudice, and with leave to either reopen this action or bring a new action against any entity that falls within Bituminous's controlled group, once identified, for the amount of judgment awarded in this action, plus damages, if any.

On February 6, 2018, the Court referred the Plaintiffs' motion to United States Magistrate Judge Gary R. Brown for a recommendation as to whether the motion should be granted, and if so, (1) the relief to be granted; (2) whether damages should be awarded, including reasonable attorneys' fees and costs; and (3) whether any other relief should be granted.

On August 29, 2018, Judge Brown issued a Report and Recommendation (the "R&R") recommending that the motion be granted, and an award of damages in the amount of \$1,124,190.41; attorney's fees in the amount of \$ 18,204.00; and costs in the amount of \$479.34.

The Plaintiffs filed proof of service on August 30, 2018.

It has been more than fourteen days since the service of the R&R, and the parties have not filed objections.

As such, pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the R&R for clear error, and finding none, now concurs in both its reasoning and its result. *See Coburn v. P.N. Fin.*, No. 13-CV-1006 (ADS) (SIL), 2015 WL 520346, at \*1 (E.D.N.Y. Feb. 9, 2015) (reviewing Report and Recommendation without objections for clear error).

Accordingly, the R&R is adopted in its entirety. The Plaintiffs are awarded damages from Bituminous in a manner consistent with the R&R. The Complaint against John Doe Companies 1-99 is dismissed without prejudice, and with leave to either reopen this action or bring a new action

against any entity that falls within Bituminous's controlled group, once identified, for the amount of judgment awarded in this action, plus damages, if any.

**SO ORDERED.**

Dated: Central Islip, New York

September 14, 2018

\_\_\_\_\_/s/ Arthur D. Spatt\_\_\_\_\_

ARTHUR D. SPATT

United States District Judge